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KINDERFARMS LLC
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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10
11 GENEXA INC,
12 Plaintiff,
13 v.
14 KINDERFARMS LLC,
15 Defendant.

CASE NO. 2:22-cv-09291

DECLARATION OF DAVID W. SCHECTER IN SUPPORT OF DEFENDANT KINDERFARMS LLC'S MOTION TO DISMISS, MOTION TO STRIKE, AND SPECIAL MOTION TO STRIKE (ANTI-SLAPP)

16 [Filed Concurrently with Notice of Motion and Motion to Dismiss Plaintiff's Complaint; Motion to Strike and Special Motion to Strike (Anti-SLAPP); Memorandum of Points and Authorities; Request for Judicial Notice; and [Proposed] Order]
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20 Hearing Date: February 13, 2023
21 Hearing Time: 10:00 am
22 Courtroom: 5A

23 Complaint Filed: December 22, 2022
24 Trial Date: Not yet set

25 Assigned to: The Honorable Michael W. Fitzgerald and Magistrate Judge Steve Kim
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DECLARATION OF DAVID W. SCHECTER

I, David W. Schecter, declare as follows:

3 1. I am an attorney duly admitted to practice before this Court. I am a
4 Partner with Miller Barondess, LLP, counsel of record for Defendant KinderFarms
5 LLC. I have personal knowledge of the facts set forth herein, and if called as a
6 witness, I could and would competently testify to all of said facts. I make this
7 declaration in support of KinderFarms LLC's Motion to Dismiss, Motion to Strike,
8 and Special Motion to Strike (anti-SLAPP) Plaintiff Genexa Inc.'s Complaint.

9 2. Genexa did not serve KinderFarms LLC with a cease and desist letter
10 before filing the Complaint. After Genexa filed the Complaint and on January 3,
11 2023, KinderFarms and one of its investors served Genexa with written
12 correspondence responding to the factual claims set forth in the Complaint and
13 attaching documentary evidence.

14 3. On January 3, 2023, KinderFarms served Genexa with a letter per Local
15 Rule 7-3 setting forth the pleading deficiencies in the Complaint and informing
16 Genexa that KinderFarms will move to dismiss and strike certain claims and
17 allegations in the Complaint.

18 4. Counsel for the parties met and conferred by telephone on January 6,
19 2023 pursuant to Local Rule 7-3. Despite counsel's efforts, the parties could not reach
20 agreement on the issues, thus necessitating this Motion.

21 5. During the meet and confer, Genexa claimed that it was not asserting a
22 trade dress infringement claim, but rather was only asserting false advertising under
23 15 U.S.C. § 1125(a)(1)(B).

24 6. Attached as **Exhibit A** to the Request for Judicial Notice, filed
25 concurrently herewith, is a true and correct copy of a webpage found at the URL:
26 <https://www.genexa.com/products/kids-cough-chest-congestion-liquid>, which I
27 visited on January 13, 2013.

28 ||| 7. Attached as **Exhibit B** to the Request for Judicial Notice, filed

1 concurrently herewith, is a true and correct copy of a webpage found at the URL:
2 <https://kinderfarms.com/products/kindermed-kids-cough-congestionthat>, which I
3 visited on January 13, 2013.

4 I declare under penalty of perjury under the laws of the United States of
5 America that the foregoing is true and correct.

6 Executed on this 13th day of January, 2023, at Los Angeles, California.



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10 David W. Schecter
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